

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

T. RAWDON BEATY, an Individual,

Plaintiff,

v.

**MERCK & CO., INC., a foreign
Corporation; TIM GRISWALD, an
Individual; and fictitious Defendants
A, B, C & D, being those persons, firms
or Corporations whose fraud, scheme to
defraud, and/or other wrongful conduct
caused or contributed to the Plaintiff's
injuries and damages, and whose true
names and identities are presently
unknown to Plaintiff, but will be
substituted by amendment when
ascertained,**

Defendants.

*
*
*
*
* **CASE NO. 2:05-cv-880-W**
*
*
*
*
*
*
*
*
*
*
*
*
*

**EMERGENCY REQUEST FOR RECONSIDERATION OF ORDER
STAYING PROCEEDINGS REQUEST FOR EXPEDITED HEARING
AND/OR RULING ON PLAINTIFF'S MOTION TO REMAND**

COMES NOW Plaintiff, by and through undersigned counsel, and hereby requests this Honorable Court to reconsider its Order granting Defendant Merck's motion to stay proceedings, and hereby requests an expedited hearing and/or ruling on Plaintiff's Motion to Remand.

Plaintiff filed this action in the Circuit Court of Barbour County, Alabama, on August 10, 2005. The Complaint includes claims against resident defendants. Defendant Merck filed its Notice of Removal and motion to stay proceedings pending transfer by the Judicial Panel on Multidistrict Litigation on September 14, 2005. The Court granted

Defendant Merck's Motion to Stay on September 22, 2005. This matter was assigned to a United States Magistrate Judge on September 21, 2005. Plaintiff requested reassignment to a United States District Judge on September 29, 2005, and filed his Motion to Remand, Brief in Support of Motion to Remand, and Plaintiff's Opposition to Merck's Motion to Stay Proceedings Pending Transfer Decision by the Judicial Panel on Multidistrict Litigation on September 26, 2005.

On October 6, 2005, the Judicial Panel on Multidistrict Litigation issued a Conditional Transfer Order (CTO-26) conditionally transferring this case to the United States District Court, Eastern District of Louisiana, for consolidated proceedings. Plaintiff timely filed his Notice of Opposition to the Conditional Transfer Order on October 13, 2005, and Plaintiff's Motion to Vacate Conditional Transfer Order on October 27, 2005.

In its Transfer Order, dated February 14, 2006 (attached as Exhibit A), the Judicial Panel rejected Plaintiff's Motion to Vacate. Thus, the case is subject to transfer pending receipt by the Clerk of the United States District Court, Middle District of Alabama, of a certified copy of the Transfer Order.

For the reasons outlined in Plaintiff's Motion to Remand and supporting brief, in Plaintiff's Notice of Opposition to Conditional Transfer Order (attached as Exhibit B), and in Plaintiff's Motion to Vacate Conditional Transfer Order and supporting brief (attached hereto as Exhibit C), remand of this case to the Circuit Court of Barbour County is appropriate. Because this Court lacks subject matter jurisdiction, this case is due to be remanded to the Circuit Court of Barbour County, Alabama. Therefore, any delay in ruling on either of these motions may result in the unnecessary transfer of this case to the MDL.

Respectfully submitted this the 23rd day of February, 2006.

/s/ J. Paul Sizemore

J. Paul Sizemore
Andy D. Birchfield, Jr.
Attorneys for Plaintiffs

OF COUNSEL:

BEASLEY, ALLEN, CROW,
METHVIN, PORTIS & MILES, P.C.
Post Office Box 4160
Montgomery, AL 36103-4160

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon the parties as listed below by placing a copy of same in the United States Mail, first class, postage prepaid on this the 23rd day of February, 2006.

/s/ J. Paul Sizemore

Of Counsel

Robert C. "Mike" Brock
Benjamin C. Wilson
R. Austin Huffaker, Jr.
RUSHTON, STAKELY, JOHNSTON & GARRETT, P.A.
Post Office Box 270
Montgomery, Alabama 36101-0270
Telephone: (334) 206-3100
Facsimile: (334) 263-4157